

BEFORE THE TALBOT COUNTY BOARD OF APPEALS

IN THE MATTER OF	*	CASE NO. SPEX-22-4
	*	
NAGEL FARM	*	SPECIAL EXCEPTION AND VARIANCE
SERVICE II, LLC	*	REQUEST APPLICATION
(Cordova Location)	*	
* * * *	*	* * * *

The Board of Appeals (the “Board”) held a hearing on December 19, 2022 in the Bradley Meeting Room, Court House, South Wing at 11 N. Washington Street, Easton, Maryland to consider the applications of Nagel Farm Service II, LLC (the “Applicant”). The Applicant requested modification to Special Exception # 1281 and a new special exception to permit expansion of the existing grain processing, drying and storage use in the Village Mixed zoning district. The Applicant also seeks a variance to permit a grain tank with a height of 134’, 2.7”. The property is located at 11761 Cordova Rd., Cordova, MD (“Property”). Chairman Frank Cavanaugh, Vice Chairman Louis Dorsey, Jr., Board Members Greg Gannon, Jeff Adelman, Zakary Krebeck, and Board Attorney Lance M. Young were present. Planner Elisa DeFlaux and Board Secretary Christine Corkell appeared on behalf of the County.

STATEMENT OF THE CASE

This Board previously granted Special Exception (#1281), for the Property, to permit *Grain Processing, Drying, and Storage (wholesale commercial)* use. The special exception was given with conditions, including Condition #7, which provides that “No further grain storage tanks are to be constructed on the site as it is currently configured ...” The Applicant desires to construct an additional grain tank and requires a modification to Special Exception #1281 to allow an additional grain tank. This Board may modify the special exception by removing or modifying Condition #7.

The Applicant also requests a new special exception and variance to construct a grain tank up to 134’, 2.7”. A variance is required from the maximum height of 100’ for grain processing, drying and storage structures, as provided in Section 190-12.1 of the Code.

SUMMARY OF TESTIMONY

Attorney Zach Smith appeared on behalf of the Applicant. The Applicant seeks a modification of its special exception, to modify or remove Condition #7, to allow further use of the Property for *Grain Processing, Drying, and Storage (wholesale commercial)*. The Applicant seeks a new special exception to allow a new grain storage tank.

The Property provides a critical service to farmers and agricultural production in Talbot County. Farmers harvest their crops and deliver them to the Property where they are stored until

the Applicant delivers the product to end users. This service, according to Mr. Smith, is essential and local farmers could not thrive without this kind of service.

The need to expand is driven by two factors: (1) Local farmers are producing more crops than they have in the past. (2) Demand is expected to increase because Perdue has announced its intent to close its Easton grain storage facility. Once Perdue closes its facility, local farmers will increasingly need to rely on Applicant's facilities in Cordova and Wye Mills.

Expansion of the facility is consistent with Talbot County's Comprehensive Plan, which prioritizes support of the agricultural industry. The Town of Cordova has also completed a master plan that is adopted by the County. It provides for the preservation and expansion of services in agriculture and supports appropriate expansion to serve local farmers.

Travis Hutchison, of Hutchison Brothers, owns and operates farm properties around Cordova. Mr. Hutchison testified that the Nagel Cordova facility is one of the best facilities around. He provided evidence that farm production yields have increased in recent years. He attributes higher yields to investments in irrigation and other agricultural innovations. Mr. Hutchison relies heavily on the Nagel Cordova facility. Without these kinds of facilities, farmers would have to keep the crops in their own fields until they could reach the end user. This would result in losses due to weather, rot, spoilage, and deer. The ability to store grains in tanks is necessary. Corn can be stored on the ground to some extent but not other grains. The ability to use the Nagel Cordova facility eliminates the need for Talbot County farmers to ship and store crops, at a higher cost, with locations that are not local.

The Farm Bureau submitted a letter in support of the Application.

Chip Nagel provided testimony on behalf of the Applicant. Mr. Nagel emphasized the increasing demand for grain storage. The Cordova facility used to receive about 40,000 bushels a day during harvest compared to 100,000 or more bushels a day currently. The closing of the Perdue facility will create a storage demand of about 800,000 bushels. The added grain tank is expected to meet the demand of the Perdue closing. It does not address the demand caused by increasing yields. Mr. Nagel anticipates that additional grain storage will be needed in the future and that may be addressed with a proposal to expand its location in Wye Mills.

Mr. Nagel further testified regarding the essential service that Nagel Farm provides. Grain stays at the facility, temporarily, for up to 5 ½ months. Nagel systematically delivers the grain to mills, which cannot store the grain long term before they provide their milling function. Longer term storage between the farmer and mill is a critical service.

Special Exception #1281 was granted in 2003. Its conditions were the result of compromise because neighbors, at that time, were concerned about noise and dust. Mr. Nagel explained that neighbors may still have concerns about dust and noise. However, the facility uses fans that are quieter. The grain dryer still puts particulates in the air that affects neighbors but the added grain tank will not add an additional grain dryer. Neighbors of the Applicant were provided notice of this Application and there is no opposition to it.

The need for a variance is because there is no room for the Property to add additional tanks. It is cost prohibitive to raise the height of existing tanks.

Stormwater management will be addressed by flatbottom swales. Sean Callahan, of Lane Engineering, testified that the design will not remove trees.

Mr. Smith stated that the Planning Commission approval included a vote by Chip Councill who sat on this Board when the Special Exception was granted. Mr. Councill remarked, during Planning Commission approval, that he believed the intent in 2003 was not to preclude expansion on the south side of the facility.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Board supports the Application. The Board is persuaded by the fact that there is no opposition from surrounding community members for the addition of the grain tank. The Board finds that there is a compelling need for additional grain storage in the County. Travis Hutchison provided compelling testimony regarding higher yields and higher demand for Nagel's facilities. Further, the expansion is consistent with the County's Comprehensive Plan and the Town of Cordova's Master Plan.

Special Exception

The Board finds by a preponderance of the evidence that the Application should be approved to remove Condition #7 from Special Exception #1281 and that a new special exception should be granted to allow for an additional grain tank. The standards for granting a special exception are met:

1. The use will be consistent with the purposes and intent of the Talbot County Comprehensive Plan. The retention and redevelopment of existing business is supported by the 2016 Comprehensive Plan ("the" Plan), with emphasis on the importance of the protection of the agriculture and agricultural support businesses. The Plan states that agriculture contributes over 50% of the Talbot County land use area. The rural vistas of agricultural fields are the primary contributor to the preservation of the rural character in the vision statement of the Plan. (*2016 Talbot County Comprehensive Plan, Chapter 1, Figure 1-11*).

As a result of the support for the preservation of agriculture by the Plan, new farm-based land uses were added to the 2018 Chapter 190 update along with agriculture-friendly and/or relaxed performance standards such as §190-26.13.C which eliminates the property line setback requirements for grain storage tanks in the Village Mixed and Village Hamlet zoning districts.

Furthermore, the Plan supported more specific zoning classifications to enhance the character of the Talbot County Villages. The 2020 Cordova Village Master Plan "the" Village Plan nominates Nagel Farm Services as the largest non-retail business in the Village of Cordova, highlights its location, and services as an integral part of the Village that supports the agricultural community (Existing Conditions Assessment). The Village Plan acknowledges that Nagel needs more "storage capacity to support and

serve local farmers” (p.22) and the village plan details the importance of “preserving, protecting services that serve local farmers/agriculture” as it was expressed by the stakeholders of the MP.

2. The use will comply with the standards of the zoning district in which it is located, except as those standards are modified by the granting of a variance with this decision.

3. The scale, bulk and general appearance of the use will be such that the use will be compatible with adjacent land uses, with existing and potential uses in its general area, and will not be detrimental to the economic value of the neighboring property. The bulk and general appearance will be the same to the existing operation. The proposed tank is taller than existing tanks but not taller than the existing grain elevator (140’). The proposed tank would become part of the existing facility where the grain operation is currently located. The facility has operated in this location for many years. The addition of a grain tank will not generate negative impacts to neighboring property values.

4. The use will not constitute a nuisance to other properties and will not have significant, adverse impacts on the surrounding area due to trash, odors, noise, glare, vibration, air and water pollution, and other health and safety factors or environmental disturbances. An additional grain storage tank for this facility would allow for increased area available for grain storage and drying. The proposed construction would not likely result in any material changes from how the business currently operates.

5. The use will not have a significant adverse impact on public facilities or services, including roads, schools, water and sewer facilities, police and fire protection or other public facilities or services.

6. The use will not have a significant adverse effect upon marine, pedestrian or vehicular traffic. The Applicant is not proposing changes to the ingress and egress points for operation.

7. The use will not produce traffic volumes, which would exceed the capacity of public or private roads in the area or elsewhere in the County, based on the road classifications established in Chapter 134, the Talbot County Roads and Bridges Ordinance, and other applicable standards for road capacity. The project plan was provided to State Highway Administration and it confirmed that it has no concerns or comments related to the proposed project.

8. Any vehicle access to proposed off-street parking areas and drive-in facilities will be designed to minimize conflicts between vehicular, bicycle and pedestrian traffic and to minimize impacts on adjacent properties and on public or private roads. In addition, any resulting commercial and truck traffic should not use a residential street nor create a hazard to a developed residential area. The site has designed the lay out to accommodate parking and circulation on site. The operation will use the traditional traffic patterns that are in place today.

9. The use will not significantly adversely affect wildlife with respect to the site’s vegetation, water resources, or its resources for supplying food, water, cover, habitat, nesting areas, or other needs of wildlife. The site will address stormwater management with flat bottom swales on the rear property line. Trees will not be removed.

Variance

The Board finds that the Applicant has satisfied the standards for granting a variance.

A. Unique physical characteristics exist such that literal enforcement of the height requirements would result in practical difficulty or unreasonable hardship in enabling the Applicant to develop the property. The property was developed prior to existing zoning regulations. It is not feasible to add additional tanks or increase the height of existing tanks on the facility.

B. The need for a variance is not based upon circumstances which are self-created or self-imposed. Higher yields of grain production and the anticipated closing of the Perdue facility have created a need for increased grain storage.

C. The variance is not requested for greater profitability or lack of knowledge of the restrictions. The facility expansion is necessary to accommodate increased grain production by local farms.

D. The variance is not contrary to the public interest and will not be a detriment to adjacent or neighboring properties. The use supports the vision statement of the Comprehensive Plan to protect agricultural lands and harvests on lands of the county, which is beneficial to the public interest. Applicant has responded to previous concerns by residents by limiting traffic on Baptist Road, installing quieter equipment, and installing vegetative tree buffers.

E. The variance will not exceed the minimum adjustment necessary to relieve the practical difficulty or unreasonable hardship. The Applicant seeks to construct a tank to the minimum height practical to accommodate growing demand for grain storage.

EXHIBITS

The Applicant submitted the following exhibits on the record during the hearing:


1. A letter in support of the Application from the Farm Bureau.
2. Landscape Planting Plan.
3. Excerpt from Cordova 2020 Master Plan.

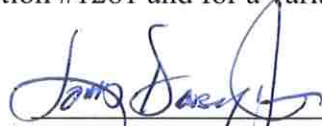
Mr. Adelman moved that the Board approve the modification of the Special Exception and grant the requested special exception and variance subject to staff conditions and no removal of trees. The motion was seconded by Mr. Gannon. Based upon the foregoing, the Board finds, by a unanimous vote that the Applicant's requests are granted subject to staff conditions.

1. The Applicant shall take all of the required steps and acquire all necessary approvals, including any additional waivers necessary, required for a Site Plan and Landscaping Plan as spelled out in the Talbot County Code.

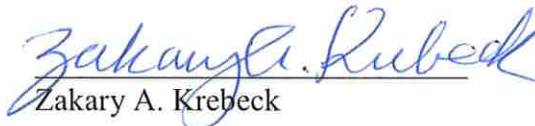
2. The Applicant shall make an application to the Office of Permits and Inspections, and follow all rules, procedures, and construction timelines as outlined regarding new construction.

IT IS THEREFORE, this 6th day of January, 2023, **ORDERED** that the Applicant's requests for modification of Special Exception #1281 and for a variance is GRANTED.


Frank Cavanaugh, Chairman


Louis Dorsey, Jr., Vice-Chairman


Greg Gannon


Zakary A. Krebeck

See attached sheet for Signature
Jeff Adelman

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